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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,115	08/22/2003	William A. Bernard	LCB378-CON-2	8907
32915	7590	03/25/2004	EXAMINER	
PANDUIT CORP. LEGAL DEPARTMENT - TP12 17301 SOUTH RIDGELAND AVENUE TINLEY PARK, IL 60477			WOOD, KIMBERLY T	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/646,115

Applicant(s)

BERNARD ET AL.

Examiner

Kimberly T. Wood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 39-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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This is the first office action for serial number 10/646,115, entitled Cable Duct Coupler, filed on 8/22/03.

#### Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 39-44, 46-54, 56-58, 60-62, and 64 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No.6,450,458. Although the conflicting claims are not identical, they are not patentably distinct from each other because Patent No. 64,450,458 discloses a cable duct coupler for coupling discrete cable duct sections, a support rib having at least one clip mount, three removable retention clip having resilient arms being sharpened or serrated at an edge , and at least one pliable engagement rib.

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Claims 39-54, and 56-64 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,634,605 in view of 6,450,458. Patent No. 065 discloses a first and second cable duct sections, a barb having first and second arms bitingly engaging said first and second cable duct sections and resisting withdrawal of the first and second cable duct sections, a closed and open position for the barb, a barb mount. Patent No. 065 discloses all of the limitations of the claimed invention except for the plurality of barbs, a barb cover, and a pliable engagement rib. Patent 458 teaches cable duct coupler for coupling discrete cable duct sections, a support rib having at least one clip mount, three removable retention clip having resilient arms being sharpened or serrated at an edge, and at least one pliable engagement rib. It would have been obvious to one having ordinary skill in the art to have modified Patent No. 605 to have included the plurality of barbs as taught by Patent No. 458 to help prevent the first and second cable ducts from accidentally detaching from the cable coupler. It would have been obvious to one having ordinary skill in the art to have modified Patent 605 to have included the barb cover to prevent the barb from detaching from the cable duct coupler. It would have been obvious to one having ordinary skill in the art to

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have modified Patent No. 605 to have included the pliable rib as taught by Patent No. 458 for the purpose of preventing slippage of the duct section past the spring arms and inadvertent removal of the duct sections.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 39-48, 51-54, and 57-64 are rejected, as best understood, under 35 U.S.C. 102(b) as being anticipated by Henneberger 5,316,243. Henneberger discloses a cable duct coupler comprising a first duct-receiving portion (22) and a second duct-receiving portion (24), a releasable automatic locking mechanism (61) including a plurality of barb (each spring 61 individually comprises an arm and edge) each having at least one arm including a knife-blade edge/serrated edge (66) bitingly engaging a respective duct section (column 4, lines 4ff), the locking mechanism/barbs are in an unstressed state prior to insertion of the cable duct sections and are mounted on

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a barb mount portion on the cable duct coupler (column 3, lines 63ff). Henneberger discloses a the mechanism/barb in a closed position (when the barb is biting into the first cable duct section) and an open position (when ends are bent back to permit a leading end of the cable duct section into the space, see column 3, lines 56ff).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No.6,450,458 in view of Gute 5,338,083. Patent No. 458 discloses all of the limitations of the claimed invention except for the flange. It would have been obvious to one having ordinary skill in the art to have modified Patent No. 458 to have included the flange as taught by Gute for the purpose of providing stability and strength.

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Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,634,605 in view of 6,450,458 in further view of Gute 5,338,083. Patent No. 605 in view of Patent No. 458 discloses all of the limitations of the claimed invention except for the flange. It would have been obvious to one having ordinary skill in the art to have modified Patent No. 605 in view of Patent No. 458 to have included the flange as taught by Gute for the purpose of providing stability and strength.

Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henneberger 5,316,243 in further view of Gute 5,338,083. Patent No. 605 in view of Patent No. 458 discloses all of the limitations of the claimed invention except for the flange. It would have been obvious to one having ordinary skill in the art to have modified Henneberger to have included the flange as taught by Gute for the purpose of providing stability and strength.

#### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Wood whose telephone number is (703) 308-0539. The examiner can normally be reached on Monday-Thursday from 7:30 AM to 5:00 PM.


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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168. The fax number for an Official Amendment or Response is (703) 872-9306. The fax number for an Unofficial Amendment or Response is (703) 308-3686.

Kimberly Wood  
Primary Examiner  
March 20, 2004

  
KIMBERLY WOOD  
PRIMARY EXAMINER